

1 OWENSBORO METROPOLITAN BOARD OF ADJUSTMENT
2 OCTOBER 4, 2012

3 The Owensboro Metropolitan Board of Adjustment
4 met in regular session at 5:30 p.m. on Thursday,
5 October 4, 2012, at City Hall, Commission Chambers,
6 Owensboro, Kentucky, and the proceedings were as
7 follows:

8 MEMBERS PRESENT: C.A. Pantle, Chairman
9 Ward Pedley, Vice Chairman
10 Ruth Ann Mason, Secretary
11 Gary Noffsinger, Director
12 Madison Silvert, Attorney
Shannon Raines
Sean Dysinger
Fred Reeves

* * * * *

13
14 CHAIRMAN: Let me call the Owensboro
15 Metropolitan Board of Adjustment to order. We start
16 our program each meeting with a prayer and pledge of
17 allegiance. Mr. Pedley will have our prayer this
18 evening.

(INVOCATION AND PLEDGE OF ALLEGIANCE.)

19
20 CHAIRMAN: Again, I want to welcome all of you
21 to the meeting this evening. If you have any comments
22 on any of the items, please come to one of the podiums
23 and state your name, please.

24 With that we'll start with the first item on
25 the agenda which are the minutes of the September 6th

1 meeting. They're on record in the office. I don't
2 think there's any problems or corrections.

3 MR. NOFFSINGER: No, sir.

4 CHAIRMAN: We'll entertain a motion to dispose
5 of them.

6 MR. DYSINGER: Move to approve.

7 MS. MASON: Second.

8 CHAIRMAN: A motion has been made and a
9 second. All in favor raise your right hand.

10 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

11 CHAIRMAN: Motion carries.

12 Next item, please.

13 -----

14 CONDITIONAL USE PERMIT

15 ITEM 2

16 3271 Alvey Park Drive E, Suite B, zoned B-3

17 Consider a request for a Conditional Use Permit in
18 order to operate a childcare facility.

Reference: Zoning Ordinance, Article 8, Section 8.2B3

18 Applicant: Shawn & Jennifer Reed; 54 Property
Management, LLC

19

20 MR. SILVERT: Could you state your name,
21 please?

22 MS. EVANS: Melissa Evans.

23 (MELISSA EVANS SWORN BY ATTORNEY.)

24 MS. EVANS: First of all, I would like to say
25 the approval of items here tonight does not allow the

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1 applicant or owner to construct, alter, modify or a
2 building on the subject property. It is the
3 applicant's and owner's responsibility to obtain all
4 approvals and inspections as necessary before
5 occupancy of the building is allowed. Please contact
6 the Building and Electrical Division of the OMPC prior
7 to beginning any work on the subject property for
8 requirements.

9 ZONING HISTORY

10 The subject property is currently zoned B-3.
11 OMPC records indicate there was a Zoning Map Amendment
12 for the subject property in 1983 rezoning it from I-1
13 to B-3.

14 There have been two previous conditional use
15 permits to operate childcare facilities and two
16 previous development plans approved for the subject
17 property in 2000 and 2007.

18 The applicant is proposing to operate a new
19 childcare facility for children ages 6 weeks to 4
20 years old. The new facility will occupy half of the
21 same unit that had been previously approved for a
22 conditional use permit to operate a childcare
23 facility.

24 LAND USES IN SURROUNDING AREA

25 The property to the north is zoned B-5

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1 Business/Industrial. The properties to the south and
2 west are zoned I-1 Light Industrial. The property to
3 the east is zoned B-3 Highway Business Center.

4 ZONING ORDINANCE REQUIREMENTS

5 1. Parking - Childcare Facility - 2 plus 1
6 for every 10 children under care. Adequate parking is
7 provided as shown on the previous development plan
8 since this use will be a reduction in size of the
9 previously approved use.

10 2. Landscaping - Vehicular use area screening
11 as shown on the previous development plan.

12 MS. EVANS: We would like to enter the Staff
13 Report into the record as Exhibit A.

14 CHAIRMAN: Thank you.

15 Have we had any questions or comments in the
16 office?

17 MR. NOFFSINGER: No, sir.

18 CHAIRMAN: Does anyone representing this
19 permit have anything to say at this time?

20 (NO RESPONSE)

21 CHAIRMAN: Anyone against it?

22 (NO RESPONSE)

23 CHAIRMAN: Entertain a motion to dispose of
24 the item, please.

25 MS. MASON: Mr. Chairman, I want to make an
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1 approval of this conditional use permit with the
2 findings of fact is that there's no opposition and
3 it's consistent with the previous approved conditional
4 use permit and it's compatible with the land use in
5 the area.

6 MR. PEDLEY: Second.

7 CHAIRMAN: A motion has been made and a
8 second. Any board member have any other comments or
9 questions?

10 (NO RESPONSE)

11 CHAIRMAN: Staff have anything to add to it?

12 MR. NOFFSINGER: No, sir.

13 CHAIRMAN: Hearing none all in favor raise
14 your right hand.

15 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

16 CHAIRMAN: Motion carries.

17 Next item, please.

18 ITEM 3

19 3037 Alvey Park Drive West, zoned I-1

Consider a request for a Conditional Use Permit in
20 order to operate an animal crematory.

Reference: Zoning Ordinance, Article 8,

21 Sections 8.2J1

Applicant: Nathan Morris; SLC Properties, LLC

22

23 ZONING HISTORY

24 The subject property is currently zoned I-1,

25 Light Industrial. OMPC records indicate there have

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1 been no Zoning Map Amendments for the subject
2 property.

3 The applicant is proposing to operate an
4 animal crematory business within the subject property.
5 As stated in the applicant's application, they will
6 remove deceased animals from residences or veterinary
7 clinics and bring them to the cremation site or
8 clients can bring their deceased animals on site
9 themselves. All activity involving the cremation
10 machine will be conducted within the confines of the
11 building, off limits to the general public. According
12 to the applicant, the cremation machine used releases
13 no smoke or ash and has no smell.

14 LAND USES IN SURROUNDING AREA

15 The properties to the north are zoned I-1
16 Light Industrial and B-4 General Business. The
17 properties to the south and east are zoned I-1 Light
18 Industrial. The property to the west is zoned B-4
19 General Business.

20 ZONING ORDINANCE REQUIREMENTS

21 1. Parking - 1 for every 400 square feet of
22 office space. The applicant is required to provide 5
23 parking spaces, as shown on the site plan submitted.

24 2. Landscaping - Vehicular use area screening
25 as shown on the site plan submitted.

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1 MS. EVANS: We would like to enter the Staff
2 Report into the record as Exhibit B.

3 CHAIRMAN: Thank you.

4 Have we had in comments or questions in the
5 office?

6 MR. NOFFSINGER: No, sir.

7 CHAIRMAN: The applicant have anything you
8 would like to add at this time?

9 (NO RESPONSE)

10 CHAIRMAN: Any opposition?

11 DR. MARSH: I have a question.

12 MR. SILVERT: Could you state your name,
13 please?

14 DR. MARSH: I'm Dr. Marsh.

15 (DR. MARSH SWORN BY ATTORNEY.)

16 DR. MARSH: It's more or less questions,
17 actually.

18 I'm a neighbor to the soon to be animal
19 funeral home, I guess. I really just have questions
20 about the crematory unit itself. It sounds like they
21 were mostly answered. The facility there is owned by
22 Henry Crabtree. Been neighbors for 30 plus years.
23 It's well maintained, but they have a chain-link fence
24 where it's pretty visible. Crematory unit as a whole
25 aren't the best thing to be out in public. If they're

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1 inside the building itself, which is what I
2 understand, that's probably going to take care of it.
3 So that was my main concern.

4 I have a question for the board then. Is
5 there any type of environmental permitting that needs
6 to be done to have a facility like this and is there
7 any future licensing or inspection that has to be, as
8 far as maintenance as such? That's a question to you
9 all.

10 CHAIRMAN: Can the Staff answer it, please?

11 MR. NOFFSINGER: No, sir, but I believe the
12 applicant is here tonight to answer any questions that
13 there might be.

14 CHAIRMAN: Would the applicant come forward
15 and state your name, and can you answer the question
16 for us, please?

17 (NO RESPONSE)

18 MR. NOFFSINGER: The applicant appears to not
19 be here tonight.

20 I will state for the record that there are no
21 local license required that the Planning Commission
22 would have any jurisdiction over. Also, there would
23 be no environmental regulations that we would have any
24 jurisdiction over.

25 DR. MARSH: So they're unregulated?

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1 MR. NOFFSINGER: I can't say that they're not
2 regulated or unregulated. I can only tell you that we
3 do not have any local standards that are enforced by
4 the Planning Commission regarding the licensing or the
5 environmental issues you speak of.

6 DR. MARSH: That answered my question.

7 CHAIRMAN: Any other questions?

8 (NO RESPONSE)

9 CHAIRMAN: Board members have any other
10 comments or questions?

11 (NO RESPONSE)

12 CHAIRMAN: Staff have anything else to add to
13 it?

14 MR. NOFFSINGER: No, sir.

15 CHAIRMAN: Hearing none the chair needs a
16 motion to approve or deny.

17 MR. DYSINGER: Mr. Chairman, given the
18 findings that the use appears to be compatible with
19 the surrounding area, I move that we grant the
20 conditional use permit.

21 CHAIRMAN: Is there a second?

22 MR. PEDLEY: Second.

23 CHAIRMAN: Any other comments or questions?

24 (NO RESPONSE)

25 CHAIRMAN: All in favor raise your right hand.

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1 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

2 CHAIRMAN: Motion carries.

3 Next item, please.

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5 VARIANCE

6 ITEM 4

7 223 East 23rd Street, zoned R-4DT

8 Consider a request for a Variance in order to increase
9 maximum fence/wall height along the southern 20 feet
10 of the eastern property line, along JR Miller
11 Boulevard, from 3 feet to 6 feet to increase the
12 maximum fence/wall height along the southern property
13 line, along East 23rd Street, from 3 feet to 4 feet
14 and to increase the maximum fence/wall height along
15 the southern 20 feet of the western property line from
16 3 feet to 4 feet.

17 Reference: Zoning Ordinance, Article 3,
18 Section 3-7(g)(3)

19 Applicant: David L. Ross

20 MS. EVANS: The subject property is bordered
21 on three sides by streets and an alley. Height
22 limitations on fences/walls normally apply with this
23 scenario except for when a property is a back to back
24 lot. In this instance, the subject property is
25 considered a back to back lot therefore allowing an 8
26 foot fence along the rear property line and a 6 foot
27 fence along the side property line along JR Miller
28 Boulevard for the portion of the fence behind the
29 front building setback line.

30 The applicant is requesting to extend the 6
31 foot high fence along JR Miller Boulevard beyond the

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1 front building setback line for a distance of 20 feet
2 since JR Miller Boulevard sits higher than the subject
3 property.

4 The City Engineer's office has reviewed the
5 site plan for that fence along JR Miller Boulevard and
6 a copy of their e-mail is in the record and it does
7 state that they have no problem with the site distance
8 triangle at that site.

9 The applicant is also wishing to install a 4
10 foot high fence/wall along the front property line and
11 the southern 20 feet of the western property line
12 instead of the allowable 3 foot high fence/wall. The
13 Zoning Ordinance was revised in late 2003 to change
14 the allowable height of a front yard fence in a
15 residential zone from 4 feet tall to 3 feet tall.
16 Because of this revision, there are over 20 front yard
17 fences in the neighborhood of the subject property
18 that are over 3 feet tall and have become
19 non-conforming, as noted by the applicant.

20 Granting this Variance will not adversely
21 affect the public health, safety or welfare because
22 the distance from the property line to the curb of JR
23 Miller Boulevard along the eastern property line
24 should not interfere with the sight distance triangle.
25 It will not alter the essential character of the

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1 general vicinity because, as noted by the applicant,
2 there are over 20 front yard fences over 3 feet tall
3 in the neighborhood.

4 Staff would recommend approval with the follow
5 conditions:

6 1. Fences or walls shall not be located
7 within any Public Utility Easements.

8 2. Fences or walls shall not be located
9 within the sight distance triangle as determined by
10 the City's Engineers office.

11 We would like to enter the Staff Report into
12 the record as Exhibit C.

13 CHAIRMAN: Thank you. Have we had any
14 comments in the office or anything?

15 MR. NOFFSINGER: No, sir.

16 CHAIRMAN: The applicant have any comments you
17 would like to make at this time?

18 MR. KAMUF: We're here to answer any
19 questions, Mr. Chairman.

20 CHAIRMAN: Any board members have any
21 questions of the applicant?

22 (NO RESPONSE)

23 MR. NOFFSINGER: Mr. Chairman, I would like to
24 say before we go any further that I will miss the
25 opportunity of looking at one of the beautiful gardens

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1 in Owensboro, Kentucky. I drive up and down JR Miller
2 Boulevard quite often. I can tell you I thoroughly
3 enjoy looking at the vegetables and the mums and the
4 different items that are in his garden. I will miss
5 that; however, I do appreciate the applicant's need
6 and desire for privacy and Staff does support the
7 applicant's request.

8 CHAIRMAN: Entertain a motion to dispose of
9 the item, please.

10 MR. PEDLEY: Mr. Chairman, I make a motion for
11 approval based on findings it will not adversely
12 affect the public health, safety or welfare because
13 the distance from the property line to the curb of JR
14 Miller Boulevard along the eastern property line
15 should not interfere with the sight distance triangle;
16 it will not alter the essential character of the
17 general vicinity because, as noted by the applicant,
18 there are over 20 front yard fences over 3 feet tall
19 in the neighborhood; it will not cause a hazard or a
20 nuisance to the public because the taller fence should
21 not interfere with the sight distance triangle; and it
22 will not allow an unreasonable circumvention of the
23 requirements of the zoning regulations because there
24 are many other front yard fences in the neighborhood
25 that are taller than 3 feet. With Conditions: 1)

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1 Fences or walls shall not be located within any Public
2 Utility Easements; 2) Fences or walls shall not be
3 located within the sight distance triangle as
4 determined by the City's Engineers office.

5 MR. DYSINGER: Second.

6 CHAIRMAN: A motion and a second. Any other
7 questions or comments from the board?

8 (NO RESPONSE)

9 CHAIRMAN: Staff have anything else?

10 MR. NOFFSINGER: No, sir.

11 CHAIRMAN: The applicant have anything you
12 want to add?

13 MR. KAMUF: No.

14 CHAIRMAN: Hearing none all in favor raise
15 your right hand.

16 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

17 CHAIRMAN: Motion carries.

18 Next item, please.

19 ITEM 5

20 429, 435 Highway 1207, zoned A-U

21 Consider a request for a Variance in order to reduce
22 the interior side yard building setback line along the
23 proposed northern property line, from 10 feet to 5.5
24 feet from the property line.

Reference: Zoning Ordinance, Article 8,
23 Section 8.5.2(d)

24 Applicant: James E. Lee; Trason L. & Cassie A.
25 Campbell and Alona Joyce Lee

MS. EVANS: The applicants have submitted a
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1 Minor Subdivision plat to reconfigure the existing
2 property lines between the subject property and the
3 property to the north at 451 Highway 1207. Currently
4 there are two detached structures located on the
5 properties of 429 and 451 Highway 1207 with only 11
6 feet of separation between the structures. The
7 existing property line between 429 and 451 Highway
8 1207 runs directly through one of the detached
9 structures on the properties.

10 The proposed redivision and consolidation of
11 the three existing lots will relocate the property
12 line between the existing 451 Highway 1207 and the
13 proposed 435 Highway 1207 placing the new division
14 line will leave each existing detached structure 5 1/2
15 feet from the property line. The existing detached
16 structure on the proposed new 435 Highway 1207 is
17 located in line with the principal structure, instead
18 of behind it, and is required to be 10 feet from the
19 property line. Therefore, the applicant is seeking a
20 Variance to reduce the interior side yard setback from
21 10 feet to the property line to 5 1/2 feet from the
22 property line to accommodate the existing detached
23 structure and proposed new division line. Allowing
24 the existing structure to be closer than the required
25 10 feet from the property line will correct an

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1 existing non-conformity where a building lies over a
2 property line.

3 Granting this Variance will not adversely
4 affect the public health, safety or welfare because
5 the detached structure has existed for some time. It
6 will not cause a hazard or a nuisance to the public;
7 to the contrary, the proposed re-division of the
8 properties will allow the property line to run between
9 the existing detached structures instead of through
10 one of them.

11 Staff would recommend approval with the
12 following condition:

13 1. Approval of a minor subdivision plat
14 reconfiguring the property lines.

15 We would like to enter the Staff Report into
16 record as Exhibit D.

17 CHAIRMAN: Thank you.

18 Have we had any comments or questions in the
19 office?

20 MR. NOFFSINGER: No, sir.

21 CHAIRMAN: The applicant have anything you
22 would like to add at this time?

23 (NO RESPONSE)

24 CHAIRMAN: Board have any questions of the
25 applicant?

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1 (NO RESPONSE)
2 CHAIRMAN: Staff have anything else to add?
3 MR. NOFFSINGER: No, sir.
4 CHAIRMAN: Entertain a motion to dispose of
5 the item, please.
6 MR. DYSINGER: Mr. Chairman, due to the
7 particular nature of this situation and the properties
8 involved and given the finding that strict application
9 of the ordinance would present a hardship to the
10 property owner, further finding that granting the
11 variance will not adversely affect the public health,
12 safety or welfare, I move that we grant the variance.
13 MS. MASON: Second.
14 CHAIRMAN: We have a motion and a second. Any
15 other questions or comments from the board?
16 (NO RESPONSE)
17 CHAIRMAN: Staff have anything else?
18 MR. NOFFSINGER: No, sir.
19 CHAIRMAN: All in favor raise your right hand.
20 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)
21 CHAIRMAN: Motion carries.
22 One final motion.
23 MR. DYSINGER: Move to adjourn.
24 MS. MASON: Second.
25 CHAIRMAN: All in favor raise your right hand.

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(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

CHAIRMAN: We are adjourned.

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1 STATE OF KENTUCKY)

)SS: REPORTER'S CERTIFICATE

2 COUNTY OF DAVIESS)

3 I, LYNNETTE KOLLER FUCHS, Notary Public in and
4 for the State of Kentucky at Large, do hereby certify
5 that the foregoing Owensboro Metropolitan Board of
6 Adjustment meeting was held at the time and place as
7 stated in the caption to the foregoing proceedings;
8 that each person commenting on issues under discussion
9 were duly sworn before testifying; that the Board
10 members present were as stated in the caption; that
11 said proceedings were taken by me in stenotype and
12 electronically recorded and was thereafter, by me,
13 accurately and correctly transcribed into the
14 foregoing 18 typewritten pages; and that no signature
15 was requested to the foregoing transcript.

16 WITNESS my hand and notary seal on this the
17 15th day of October, 2012.

18

19

LYNNETTE KOLLER FUCHS
NOTARY ID 433397
OHIO VALLEY REPORTING SERVICES
202 WEST THIRD STREET, SUITE 12
OWENSBORO, KENTUCKY 42303

22

23 COMMISSION EXPIRES: DECEMBER 16, 2014

24 COUNTY OF RESIDENCE: DAVIESS COUNTY, KY

25

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